

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KATHLEEN HUBER, Guardian of  
BARRY HUBER, a Legally Incapacitated Person,

UNPUBLISHED  
January 21, 2003

Plaintiff-Appellee,

v

DEPARTMENT OF TRANSPORTATION,

No. 236756  
Genesee Circuit Court  
LC No. 98-062218-NI

Defendant-Appellant,

and

DAVID LEYTON, Personal Representative of  
the Estate of LYDIA C. HERRON, Deceased, and  
SPORTS CARS, INC.,

Defendants.

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Before: Cooper, P.J., and Bandstra and Talbot, JJ.

MEMORANDUM.

Defendant Department of Transportation appeals by leave granted the order denying its motion for summary disposition based on governmental immunity. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This action arises out of an automobile accident in which plaintiff's son suffered brain injuries in utero. Her claims against the driver of the car and against the department of transportation were consolidated for trial. As to the department of transportation, plaintiff asserted that the highway was not reasonably safe because of inadequate sight distance, lack of traffic control devices, and lack of warning signs. The trial court denied summary disposition, finding that a question of fact existed regarding the adequacy of the sight distance at the accident scene.

The immunity conferred on governmental agencies is broad, with only narrowly drawn exceptions. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984). "The highway exception waives the absolute immunity of governmental units with regard to defective highways under their jurisdiction." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000). However, the duty imposed by the highway exception is

only to repair and maintain the improved portion of the highway designed for vehicular travel. *Id.* at 179-180.

In *Hanson v Mecosta Co Rd Commr's*, 465 Mich 492; 638 NW2d 396 (2002), the plaintiff maintained that a section of highway was unsafe because of limited sight distance caused by the curvature of a hill. Despite the plaintiff's argument that these allegations involved the actual roadway, our Supreme Court found that the plain language of the highway exception provides for a duty to repair and maintain, not a duty to design or redesign. *Id.* at 503. There is no duty to design or redesign a road to eliminate points of hazard. *Id.*

Following *Hanson*, plaintiff has failed to state a claim within the highway exception to governmental immunity. The trial court erred in denying defendant's motion for summary disposition.

Reversed.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot